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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/627,011

07/25/2003

William Kress Bodin

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EXAMINER

HIRL, JOSEPH P

ART UNIT

PAPER NUMBER

2129

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/627,011

**Applicant(s)**

BODIN ET AL.

**Examiner**

Joseph P. Hirl

**Art Unit**

2129

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>110303</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. Claims 1-30 are pending in this application.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims do not identify a practical application that produces a useful, tangible and concrete result using the claimed methodology. Rubber-Tip Pencil Co. v. Howard, 87 U.S. (20 Wall.) 498, 507 (1874) The USPTO published the "Interim Guidelines for Examination of Patent Applications for Subject Matter Eligibility" on October 26, 2005 and posted such guidelines to the uspto.gov website that are used in this application.

A useful result must manifest the features of specificity, substantialness and creditability. The instant application lacks specificity as noted by example in reference to the following claims:

- 1., 21 ...identifying an action and executing the action.
- 2., 12., 22 ...filtering the user metrics
- 3., 13., 23. ...creating a relational metric...
- 4., 14., 24. ...determining a relationship ...
- 5., 6., 15., 16., 25., 26. ... creating a relational metric ...

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- 7., 17., 27. ... retrieving a relationship metric
- 8., 18., 28. ... creating a user metric vector ...
- 9., 10., 19., 20., 29., 30. ... selection an action ID ...
- 11. ... receiving a plurality of user metrics ...

Also, a tangible result must not exhibit abstractness. The instant application has abstract results as noted by example in reference to the above claims. Further and concerning claim 11, "means for executing the action" is abstract and not the actual execution of the action that provides the tangible result if such tangible result can be identified in the "means for."

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Kroll et al. (U.S. Patent 6,645,153, referred to as **Kroll**).

**Claims 1, 11, 21**

Kroll anticipates receiving a plurality of user metrics (**Kroll**, Abstract; Examiner's Note (EN): ¶ 9. applies; a metric is a value and the ventilator response is a metric made up of a plurality of metrics); creating a relational metric in dependence upon the plurality of user metrics (**Kroll**, Abstract; EN: such is the CHF mortality risk metric); creating a user metric vector comprising at least one user metric and at least one relational metric (**Kroll**, Abstract; EN: such is the CHF mortality risk metric); creating a user metric space comprising a plurality of metric ranges (**Kroll**, Abstract; EN: such is the space of a critical threshold value); determining whether the user metric vector is outside the user metric space (**Kroll**, Abstract; EN: such is the space of a critical threshold value); if the user metric vector is outside a user metric space, identifying an action; and executing the action (**Kroll**, Abstract; EN: a warning is generated).

**Claims 2, 12, 22**

Kroll anticipates creating a relational metric in dependence upon the plurality of user metrics comprises filtering the user metrics (**Kroll**, c7:50-57).

**Claims 3, 4, 5, 13, 14, 15, 23, 24, 25**

Kroll anticipates creating a relational metric in dependence upon the plurality of user metrics comprises determining a relationship between a first filtered user metric and a second filtered user metric (**Kroll**, c7:50-57; EN: each circuit is filtered).

**Claims 6, 16, 26**

Kroll anticipates creating relational metric in dependence upon the plurality of user metrics comprises determining whether the plurality of user metrics match a predefined metric pattern (**Kroll**, c8:22-23).

**Claims 7, 17, 27**

Kroll anticipates retrieving a relational metric, if the plurality of user metrics match the predefined metric pattern (**Kroll**, c8:13-30).

**Claims 8, 18, 28**

Kroll anticipates creating a user metric vector comprising at least one user metric and at least one relational metric comprises associating at least one user metric with the user metric vector and associating at least one relational metric with the user metric vector (**Kroll**, Abstract; c8:59-67; EN: vectors axiomatically constitute a single set of values wherein for a metric vector, metric values would be assigned that would have some relation to the metric vector).

**Claims 9, 19, 29**

Kroll anticipates determining a user's location; and selecting an action ID in dependence upon the user's location (**Kroll**, c7:38-43; c8:1-12; EN: user's location would be the specific chamber of the heart; such that triggering or inhibiting the atrial and ventricular pulse generators would follow as the selected action).

**Claims 10, 20, 30**

Kroll anticipates determining user movement; and selecting an action ID in dependence upon the user movement (**Kroll**, c7:38-43; c8:1-12; EN: user's location

would be the specific chamber of the heart; such that triggering or inhibiting the atrial and ventricular pulse generators would follow as the selected action; Kroll's system would follow a change in cardiac activity).

### ***Examination Considerations***

6. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

7. Examiner's Notes are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior

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art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

8. Unless otherwise annotated, Examiner's statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

9. Examiner's Opinion: ¶¶ 6.-8. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

### ***Conclusion***

10. The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

- Ochs, U.S. Patent 4,461,301
- Baird et al, U.S. Pub 2003/0145128
- Brown, Jr. et al, U. S. Patent 5,761,083
- Mollenkopf, U.S. Pub 2004/0113756
- Banginwar, U.S. Patent 2003/0195957

11. Claims 1-30 are rejected.

### ***Correspondence Information***

12. Any inquiry concerning this information or related to the subject disclosure



should be directed to the Primary Examiner, Joseph P. Hirl, whose telephone number is (571) 272-3685. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, David R. Vincent can be reached at (571) 272-3080.

Any response to this office action should be mailed to:

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Hand delivered to:

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(located on the first floor of the south side of the Randolph Building);

or faxed to:

(571) 273-8300 (for formal communications intended for entry).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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Business Center (EBC) at 866-217-9197 (toll free).



P. E.

Joseph P. Hirl  
Primary Examiner  
March 14, 2006